

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NORMAN HENRY SMITH,	§
	§
Petitioner Below-	§ No. 773, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ for the State of Delaware,
CARL DANBERG, <i>et al.</i> ,	§ in and for New Castle County
	§ C.A. No. 10M-11-004
Respondents Below-	§
Appellees.	§

Submitted: August 12, 2011

Decided: October 12, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 12th day of October 2011, upon consideration of the parties' briefs and the expanded record on appeal, it appears to the Court that:

(1) The appellant, Norman Henry Smith, filed this appeal from the Superior Court's dismissal of his complaint, which sought a writ of mandamus directing the Department of Correction to return Smith to the State of Maryland to answer a series of open criminal charges as well as a parole violation. Because Smith cannot establish a clear legal right to the relief sought, we find no error in the Superior Court's dismissal of his complaint.

(2) The record reflects that, on May 3, 2010, Smith pled guilty in the Delaware Superior Court to one count of first degree robbery and was immediately

sentenced to ten years at Level V incarceration, to be suspended after serving three years for probation. Smith is incarcerated at the Young Correctional Institute in Wilmington, Delaware. On November 1, 2010, Smith filed a complaint in the Superior Court seeking a writ of mandamus directing correctional authorities to transfer him to the State of Maryland to answer open criminal charges there. The Superior Court dismissed Smith's complaint on November 16, 2010 for failing to state a claim upon which relief could be granted. This appeal followed.

(3) On appeal, Smith contends that he has a right to be extradited to Maryland under the Interstate Agreement on Detainers¹ (IAD) to answer open criminal charges there. He further contends that the Department of Correction is arbitrarily refusing to perform its duties under the IAD and that he has no other remedy.

(4) While Smith cites the proper legal standard for the issuance of a writ of mandamus,² we disagree with his contention that he has established a clear right to be extradited to Maryland under the IAD. The record reflects that Smith has open warrants in Wicomico County and Worcester County, Maryland. In Worcester County, the record reflects that no detainers have been lodged against

¹ See DEL. CODE ANN. tit. 11, §§ 2540 *et seq.* (2007).

² *Clough v. State*, 686 A.2d 158, 159 (Del. 1996) (holding that, as a condition precedent to the issuance of a writ of mandamus, a petitioner must demonstrate that: i) he has a clear right to the performance of the duty; ii) no other adequate remedy is available; and iii) the administrative agency has arbitrarily failed or refused to perform its duty).

Smith there. Thus, contrary to Smith's assertion, the IAD is inapplicable.³ Moreover, to the extent Smith has an open probation or parole violation in Worcester County, the IAD does not apply to such a violation.⁴ He thus cannot establish a legal right to extradition on those charges. Furthermore, the record reflects that the DOC requested final disposition through the IAD of Smith's warrants in Wicomico County, but Wicomico County officials refused to authorize Smith's extradition. By making the request, Delaware officials have fulfilled their duties under the IAD, and no further action is required. Smith, therefore, cannot establish that the DOC has arbitrarily refused to perform a duty it owes to him.

(5) Under the circumstances, Smith has not demonstrated that the DOC arbitrarily failed or refused to perform a duty to which he has a clear right. As such, the Superior Court acted within its discretion when it dismissed his petition for a writ of mandamus for failure to state a claim upon which relief may be granted.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ DEL. CODE ANN. tit. 11, § 2542(a) (2007).

⁴ *Norris v. Redman*, 1985 WL 14040 (Del. Sept. 13, 1985) (citing *Carchman v. Nash*, 473 U.S. 716, 725 (1985)).